

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE BOARD OF  
PEACE OFFICER STANDARDS AND TRAINING

In the Matter of the Proposed Amendments  
To Rules Governing Training and Licensing,  
Minnesota Rules Chapter 6700.

Administrative Law Judge Beverly Jones Heydinger conducted a hearing on these proposed rule amendments beginning at 9:30 a.m. on July 25, 2000, in Room 500 South,<sup>[1]</sup> State Office Building, 100 Constitution Avenue, St. Paul, Minnesota. The hearing continued until everyone present had an opportunity to state their views on the proposed rules.

This Report is part of a rulemaking process governed by the Minnesota Administrative Procedure Act.<sup>[2]</sup> The legislature has designed the rulemaking process to ensure that state agencies have met all the requirements that Minnesota law specifies for adopting rules. Those requirements include assurances that the proposed rules are necessary and reasonable and that any modifications that the agency may have made after the proposed rules were initially published are not impermissible substantial changes. The rulemaking process also includes a hearing, when a sufficient number of persons request one. The hearing is intended to allow the agency and the administrative law judge reviewing the proposed rules to hear public comment regarding the impact of the proposed rules and what changes might be appropriate.

Michelle Owen, Assistant Attorney General, 525 Park St., Suite 200, St. Paul, Minnesota 55103-2106, appeared as the attorney for the Board of Peace Officer Standards and Training (Board). Two Board employees, Neil Melton, Executive Director of the Board, and Nancy Haas, Rules Coordinator were available to provide the public with information about the proposed rules and to answer any questions. One member of the public attended the hearing and signed the hearing register.

After the hearing ended, the record remained open for ten calendar days, until August 1, 2000, to allow interested persons and the Board an opportunity to submit written comments.<sup>[3]</sup> During this initial comment period the administrative law judge received no comments. Following the initial comment period, the record remained open for an additional five business days to allow interested persons and the Board the opportunity to file a written response to any comments submitted.<sup>[4]</sup> The deadline for response to the comments was August 8, 2000. None were received. The hearing record closed for all purposes on August 8, 2000.

## NOTICE

The Board must make this Report available for review for at least five working days before the Board takes any further action to adopt final rules or to modify or withdraw the proposed rules.<sup>[5]</sup> During that time, this Report must be made available to interested persons upon request. If the Board makes changes in the rules other than those recommended in this Report, it must submit the rules, along with the complete hearing record, to the Chief Administrative Law Judge for a review of those changes before it may adopt the rules in final form.<sup>[6]</sup>

After adopting the final version of the rules, the Board must submit the rules to the Revisor of Statutes for a review of their form.<sup>[7]</sup> After the Revisor of Statutes approves the form of the rules, the rules must be filed with the Secretary of State. On the day of that filing, the Board must give notice to everyone who requested notice of that filing.<sup>[8]</sup>

Based upon all the testimony, exhibits, and written comments, the Administrative Law Judge makes the following:

## FINDINGS OF FACT

### Procedural Requirements

1. On December 6, 1999, the Board published a Request for Comments on Planned Revision to Rules Governing Training and Licensing at 24 State Register 764.<sup>[9]</sup>
2. On April 25, 2000, the Board requested that a hearing be scheduled and filed the following documents with the Chief Administrative Law Judge:<sup>[10]</sup>
  - a. A copy of the proposed rules certified as to form by the Revisor of Statutes;
  - b. The Statement of Need and Reasonableness (SONAR);
  - c. The Dual Notice proposed to be published; and
  - d. The Department's request for prior approval of its Notice Plan for giving Dual Notice.
3. Administrative Law Judge Beverly Jones Heydinger approved the Department's Notice Plan on May 3, 2000.<sup>[11]</sup>
4. The Board mailed the Dual Notice of Hearing to all persons and associations who had registered their names with the agency for the purpose of receiving such notice.<sup>[12]</sup>

5. The Dual Notice of Hearing was published on May 22, 2000, at 24 State Register 1686-1689.<sup>[13]</sup>

6. The Board received many comments and over twenty-five requests for a hearing on this matter.<sup>[14]</sup>

7. On the day of the hearing, the Board placed the following additional documents into the record.<sup>[15]</sup>

a. Certificate of Agency Rulemaking Mailing List, current as of July 1, 2000, with a copy of the list attached.<sup>[16]</sup>

b. The Revised Revision to the Rules, reflecting the portions of the proposed rules withdrawn by the Board.<sup>[17]</sup>

c. Certificate of mailing the Statement of Need and Reasonableness to Legislative Reference Library.<sup>[18]</sup>

8. The Board did not initially file a copy of the statement of need and reasonableness with the Legislative Commission to Review Administrative Rules, as required by Minn. Rule 1400.2220 subp. 1.E. However, one was mailed to the Legislative Commission by the Board on August 28, 2000, and a copy of the transmission letter was forwarded to the administrative law judge on the same date. Although the rule requires that this document be presented at hearing, the administrative law judge finds that the delay did not deprive any person or entity of an opportunity to participate meaningfully in the rulemaking process and has been rectified.<sup>[19]</sup>

9. The Board has met all of the procedural requirements under the applicable statutes and rules.

### **Background and Nature of the Proposed Rules**

10. This rulemaking proceeding involves amendments to existing rules of the Minnesota Board of Peace Officer Standards and Training governing minimum selection standards prior to appointment to the position of peace officer.

### **Statutory Authority**

11. The Board is authorized to adopt rules governing minimum standards for peace officers.<sup>[20]</sup>

12. The Administrative Law Judge finds that the Board has the statutory authority to adopt the proposed rules.

## **Rulemaking Legal Standards**

13. Under Minnesota law,<sup>[21]</sup> one of the determinations that must be made in a rulemaking proceeding is whether the agency has established the need for and reasonableness of the proposed rules by an affirmative presentation of facts. In support of a rule, an agency may rely on legislative facts, namely general facts concerning questions of law, policy and discretion, or it may simply rely on interpretation of a statute, or stated policy preferences.<sup>[22]</sup> The Board prepared a SONAR in support of its proposed rules. At the hearing, the Board relied upon the SONAR as its affirmative presentation of need and reasonableness for the proposed amendments.

14. The question of whether a rule has been shown to be reasonable focuses on whether it has been shown to have a rational basis, or whether it is arbitrary, based upon the rulemaking record. Minnesota case law has equated an unreasonable rule with an arbitrary rule.<sup>[23]</sup> Arbitrary or unreasonable agency action is action without consideration and in disregard of the facts and circumstances of the case.<sup>[24]</sup> A rule is generally found to be reasonable if it is rationally related to the end sought to be achieved by the governing statute.<sup>[25]</sup> The Minnesota Supreme Court has further defined an agency's burden in adopting rules by requiring it to "explain on what evidence it is relying and how the evidence connects rationally with the agency's choice of action to be taken."<sup>[26]</sup> The agency's policy must be one that a rational person could have made.<sup>[27]</sup>

15. In addition to need and reasonableness, the Administrative Law Judge must also assess whether the rule adoption procedure was complied with, whether the rule grants undue discretion, whether an agency has statutory authority to adopt the rule, whether the rule is unconstitutional or illegal, whether the rule constitutes an undue delegation of authority to another entity, or whether the proposed language is not a rule.<sup>[28]</sup> In this matter, the Board has proposed changes to the rule after publication of the proposed amendments in the State Register. Because of this, the Administrative Law Judge must determine if the new language is substantially different from that which was originally proposed.<sup>[29]</sup>

16. The standards to determine if new language is substantially different are found in Minn. Stat. §14.05, subd. 2 (1998). The statute specifies that a modification does not make a proposed rule substantially different if "the differences are within the scope of the matter announced in the...notice of hearing and are in character with the issues raised in that notice," the differences "are a logical outgrowth of the contents of the...notice of hearing and the comments submitted in response to the notice," and the notice of hearing "provided fair warning that the outcome of that rulemaking proceeding could be the rule in question." In determining whether modifications are substantially different, the Administrative Law Judge is to consider whether "persons who will be affected by the rule should have understood that the rulemaking proceeding...could affect their interests," whether "the subject matter of the rule or issues determined by the rule are different from the subject matter or issues contained in the...notice of hearing," and whether "the effects of the rule differ from the effects of the proposed rule contained in the...notice of hearing."<sup>[30]</sup>

### **Impact of Farming Operations**

17. Minnesota Statutes, section 14.111, imposes an additional notice requirement when rules are adopted that affect farming operations. In essence, the statute requires that an agency must provide a copy of any such proposed rule change to the Commissioner of Agriculture at least thirty days prior to publishing the proposed rule in the State Register.

18. The proposed rules do not impose restrictions or have a direct impact on fundamental aspects of farming operations. The Administrative Law Judge finds that the proposed rule change will not affect farming operations in Minnesota, and thus finds that no additional notice is required.

### **Statutory Requirements for the SONAR**

#### *Cost and Alternative Assessments in the SONAR:*

19. Minnesota Statutes, Section 14.131 requires an agency adopting rules to include in its SONAR:

- (1) a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;
- (2) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues;
- (3) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule;
- (4) a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule;
- (5) the probable costs of complying with the proposed rule; and
- (6) an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for an reasonableness of each difference.

20. The SONAR includes the analysis performed by the agency to meet the requirements of the statute.<sup>[31]</sup>

21. The proposed amendments will affect persons who apply to become a licensed police officer or may consider applying. The proposed amendments may also

affect the general public because it affects the qualifications of police officers who will serve it.

22. The Board is responsible for implementing the rule amendments. It anticipates no direct costs to do so.

*Differences between the proposed rules and federal regulation.*

23. There are no federal regulations that directly govern these rule amendments.

*Performance-Based Regulation:*

24. Minnesota Statutes, section 14.131, requires that an agency include in its SONAR a description of how it “considered and implemented the legislative policy supporting performance-based regulatory systems set forth in section 14.002.” Section 14.002 states, in relevant part, that “whenever feasible, state agencies must develop rules and regulatory programs that emphasize superior achievement in meeting the agency’s regulatory objectives and maximum flexibility for the regulated party and the agency in meeting those goals.” Although the rule amendments as originally proposed were more flexible and “performance-based” for applicants than the amendments in their current form, the amendments are only slightly more restrictive for applicants than the current rules, and were tightened in support of certain public policies, including the desire for public confidence in the image and integrity of peace officers.

25. The Administrative Law Judge concludes that the Board has met the requirements set forth in Minn. Stat. § 14.131 for assessing the impact of the proposed rules, including consideration and implementation of the legislative policy supporting performance-based regulatory systems.

**Discussion of the Proposed Amendments**

26. This Report is limited to the discussion of the portions of the proposed rules that received critical comment or otherwise need to be examined, and it will not discuss each comment or rule part. Because the sections of the proposed rules that drew the strongest objection were withdrawn and the others drew no response and were adequately supported by the SONAR, a detailed discussion of each section of the proposed rules is unnecessary. The Administrative Law Judge specifically finds that the Board has demonstrated the need for and reasonableness of all rule provisions not specifically discussed in this Report by an affirmative presentation of facts. The Administrative Law Judge also finds that all provisions not specifically discussed are authorized by statute and there are no other problems that would prevent the adoption of the rules.

**6700.0300 – Professional Peace Officer Education**

**Subpart 5 B. – Participation Requirements**

27. This change must be read in conjunction with Minn. Rules pt. 6700.0700. It is intended to simplify the language of this provision and clarify that conviction of certain offenses will disqualify the applicant. The list of disqualifying crimes is fully set forth in 6700.0700. This change eliminates unnecessary repetition. The disqualifiers listed in 6700.0700 mirror the language deleted here, or have been deleted to avoid confusing or misleading references, as fully explained in the SONAR. The Board has demonstrated the need for and reasonableness of this rule amendment.

## **6700.0700 – Minimum Selection Standards**

### **Subpart 1. Selection Standards**

28. The proposed amendments to this subpart generated broad interest. Specifically, the Board had proposed to remove two misdemeanor offenses as bars to peace officer licensing, and allow an applicant with a misdemeanor theft conviction (less than \$200) to enter peace officer training if certain criteria were met. In response to its dual notice, the Board received many objections to loosening the eligibility criteria with requests for hearing.<sup>[32]</sup> Because of the controversy generated by the proposed changes, the Board held a special meeting on June 22, 2000 and voted to withdraw those proposed amendments, and to proceed with the amendment adding domestic assault and promotion of prostitution to the list of disqualifying offenses.<sup>[33]</sup> This decision addressed virtually all of the comments the Board received.

29. As currently proposed, these amendments clarify the felonies and other specified crimes that will exclude an applicant from becoming a police officer. There are some changes to the list of disqualifying crimes, as fully discussed in the SONAR. The Board has demonstrated the need for and reasonableness of this rule amendment.

30. At the hearing, Michelle Paquin, a representative of the Battered Women's Advocacy Project, testified in support of adding domestic assault as a disqualifying crime.

31. In addition, Ms. Paquin pointed out a limitation of the rules for the Board's consideration. The current rules, and the proposed amendments, disqualify applicants if convicted of certain offenses "in this state or in any other state or federal jurisdiction."<sup>[34]</sup> Ms. Paquin is concerned that a conviction by an Indian tribal court may not disqualify applicants because tribal courts are neither state nor federal courts. She stated that the Board had agreed to certify peace officers for some Indian bands. The public may not be adequately protected if the Board cannot consider convictions by tribal courts when reviewing applicants' background. Ms. Paquin's comments do not go directly to the need for and reasonableness of the Board's proposed amendments and are not directly relevant to this proceeding. Nonetheless, they are included here to assure that the Board is aware of the significant question raised by Ms. Paquin and presented by the rule.

32. By withdrawing some proposed amendments, the Board largely leaves the current rules in place. This is a logical outgrowth of the rulemaking process. Faced with strong opposition the Board reconsidered its proposed choices and, in effect, retained the status quo. This result could have been anticipated by those with an interest in the proceeding. No new subject matter or issues were presented by the Board's decision.

33. Although the Board has shown the need for and reasonableness of its amendment, it is not precluded from modifying the proposed rule, based upon the public comments.

Based on the foregoing Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS**

1. The Minnesota Board of Police Officer Standards and Training gave proper notice in this matter.

2. The Board has fulfilled the procedural requirements of Minn. Stat. § 14.14, and all other procedural requirements of law or rule.

3. The Board has demonstrated its statutory authority to adopt the proposed rules, and has fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat. §§ 14.05, subd. 1; and 14.50 (i) and (ii).

4. The Board has demonstrated the need for and reasonableness of the proposed rules by an affirmative presentation of facts in the record within the meaning of Minn. Stat. §§ 14.131, 14.14, subd. 2; and 14.50 (iii).

5. The deletions to the proposed amendments after publication of those amendments in the State Register are not substantially different from the proposed rules as published in the State Register within the meaning of Minnesota Stat. §§ 14.05, subd. 2 and 14.15, subd. 3 (1998).

6. Any Findings that might properly be termed Conclusions and any Conclusions that might properly be termed Findings are hereby adopted as such.

7. A Finding or Conclusion of need and reasonableness with regard to any particular rule subsection does not preclude and should not discourage the Board from further modification of the proposed rules based upon this Report and an examination of the public comments, provided that the rule finally adopted is based upon facts as appearing in this rule hearing record.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

### **RECOMMENDATION**



**IT IS HEREBY RECOMMENDED** that the proposed rule amendments be adopted.

Dated this 6th day of September 2000.

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BEVERLY JONES HEYDINGER  
Administrative Law Judge

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<sup>[1]</sup> The hearing was scheduled for Room 500 North, but moved Room 500 South because of equipment problems. The change was readily apparent; the doors to the two rooms are within a few feet of each other.

<sup>[2]</sup> Minn. Stat. §§ 14.131 through 14.20 (1998). (Unless otherwise stated, all further references to Minnesota Statutes are to the 1998 version.)

<sup>[3]</sup> Minn. Stat. § 14.15, subd. 1.

<sup>[4]</sup> *Id.*

<sup>[5]</sup> Minn. Stat. § 14.15, subd. 2.

<sup>[6]</sup> Minn. Stat. § 14.16, subd. 1.

<sup>[7]</sup> Minn. Stat. § 14.20.

<sup>[8]</sup> Minn. Stat. § 14.16, subds. 1 and 3.

<sup>[9]</sup> Ex. 1; Minn. Stat. § 14.101.

<sup>[10]</sup> Minn. Stat. § 14.225; Minn. Rules pt. 1400.2080, subp. 5.

<sup>[11]</sup> Ex. 12.

<sup>[12]</sup> Ex. 6.

<sup>[13]</sup> Ex. 5.

<sup>[14]</sup> Ex. 7; Minn. Stat. § 14.25, subd. 1.

<sup>[15]</sup> Minn. Stat. §§ 14.14, subd. 2a; 14.116. See letter from Neil Melton, August 28, 2000.

<sup>[16]</sup> Ex. 6.

<sup>[17]</sup> Ex. 8.

<sup>[18]</sup> Ex. 4; Minn. Stat. § 14.131.

<sup>[19]</sup> Minn. Stat. § 14.15, subd. 5 (1998).

<sup>[20]</sup> Minn. Stat. § 626.843 (1998).

<sup>[21]</sup> Minn. Stat. § 14.14, subd. 2; Minn. R. part 1400.2100.

<sup>[22]</sup> Mammenga v. Board of Human Services, 442 N.W.2d 786 (Minn. 1989); Manufactured Hous. Inst. v. Pettersen, 347 N.W.2d 238, 244 (Minn. 1984).

<sup>[23]</sup> In re Hanson, 275 N.W.2d 790 (Minn. 1978); Hurley v. Chaffee, 231 Minn. 362, 43 N.W.2d 281, 284 (1950).

<sup>[24]</sup> Greenhill v. Bailey, 519 F.2d 5, 19 (8<sup>th</sup> Cir. 1975).

<sup>[25]</sup> Mammenga, 442 N.W.2d at 789-90; Broen Mem'l Home v. Minnesota Dep't of Human Services, 364 N.W.2d 436, 444 (Minn. Ct. App. 1985).

<sup>[26]</sup> Manufactured Hous. Inst. v. Pettersen, 347 N.W.2d at 244.

<sup>[27]</sup> Federal Sec. Adm'r v. Quaker Oats Co., 318 U.S. 218, 233 (1943).

<sup>[28]</sup> Minn. R. part 1400.2100.

<sup>[29]</sup> Minn. Stat. § 14.15, subd. 3.

<sup>[30]</sup> Minn. Stat. § 14.05, subd. 2 (1998).

<sup>[31]</sup> Ex. 3.

<sup>[32]</sup> Ex. 7.

<sup>[33]</sup> Ex. 10.

<sup>[34]</sup> Minn. Rules 6700.0700, subp. 1.E (1). See also subp. 1.E (2).